

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KENNETH FERENCE,

Plaintiff,

vs.

ROMAN CATHOLIC DIOCESE OF
GREENSBURG and AQUINAS
ACADEMY,

Defendants.

ELECTRONICALLY FILED

No. 2:22-cv-00797-NR-MPK

District Judge J. Nicholas Ranjan
Magistrate Judge Maureen P. Kelly

JURY TRIAL DEMANDED

RULE 12(b)(6) MOTION TO DISMISS FIRST AMENDED COMPLAINT

AND NOW comes Defendant Roman Catholic Diocese of Greensburg (“Diocese”) and Defendant Aquinas Academy (“Aquinas” and when collectively referred to with Diocese, “Defendants”) through their counsel, Bernard P. Matthews, Jr., Esquire and Alexander W. Brown, Esquire, of Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. and Philip J. Murren, Esquire, David R. Dye, Esquire, and Katherine M. Fitz-Patrick, Esquire of Ball, Murren & Connell, LLC, and files this Rule 12(b)(6) Motion to Dismiss First Amended Complaint.

1. Mr. FERENCE brought a two-count first amended complaint against Defendants contending that they violated Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act (“PHRA”) by terminating him from his employment as a schoolteacher at Aquinas, a private Catholic school, due to his sexual orientation. (ECF No. 42 Prelim. Statement.)

2. Mr. FERENCE’s first amended complaint fails to state a claim upon which relief can be granted as to Title VII and the PHRA, requiring the entire first amended complaint to be dismissed with prejudice. Fed. R. Civ. P. 12(b)(6).

3. This is because Defendants' purpose is inculcating Catholic views upon children enrolled at Aquinas, including that marriage is between only a man and a woman, and Mr. Ference's decision to enter into a same-sex marriage is contrary to Defendants' views on marriage.

4. Defendants have a First Amendment right, as recently confirmed by the Supreme Court in 303 Creative LLC v. Elenis, of expressive association.

5. Defendants' First Amendment right of expressive association includes their right to not be associated with individuals like Mr. Ference, whose views on marriage contradict those held by Defendants.

6. Mr. Ference's presence at Aquinas as a teacher in a same-sex marriage diluted Defendants' ability to inculcate their views on marriage to Aquinas's students.

7. Thus, Defendants' termination of Mr. Ference was lawful under the First Amendment, notwithstanding any provisions or interpretations of Title VII and the PHRA.

8. Defendants' contemporaneously filed brief supporting this Rule 12(b)(6) motion is hereby incorporated as if fully stated herein.

9. Also incorporated herein is a contemporaneously filed certificate of compliance with the Court's Rule 12(b) motion meet and confer requirement.

10. Exhibits A–D to Diocese's contemporaneously filed brief supporting this Rule 12(b)(6) motion are incorporated as if fully stated herein.

11. Certificates of service with this Rule 12(b)(6) motion to dismiss and Diocese's contemporaneously filed brief supporting this Rule 12(b)(6) motion to dismiss are incorporated as if fully stated herein.

12. A contemporaneously filed proposed order is also incorporated as if fully stated herein.

Respectfully submitted,

**MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.**

/s/ Bernard P. Matthews, Jr., Esq.
BERNARD P. MATTHEWS, JR., ESQ.
PA. I.D. #54880
bmatthews@mdbbe.com
ALEXANDER W. BROWN, ESQ.
PA. I.D. #322661
abrown@mdbbe.com

40 North Pennsylvania Ave., Suite 410
Greensburg, PA 15601
Telephone No.: (724) 836-4840
Fax No.: (724) 836-0532
(Attorneys for Defendants)

BALL, MURREN & CONNELL, LLC

/s/ Philip J. Murren, Esq.
PHILIP J. MURREN, ESQ.
PA. I.D. #21426
bmc-law2@msn.com
DAVID R. DYE, ESQ.
PA. I.D. #88665
dye@bmc-law.net
**KATHERINE M. FITZ-PATRICK,
ESQ.**
PA. I.D. #208863
fitz-patrick@bmc-law.net

2303 Market Street
Camp Hill, PA 17011
Telephone No.: (717) 232-8731
Fax No.: (717) 232-2142
(Attorneys for Defendants)